

Message Text

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ORIGIN L-03

INFO OCT-01 NEA-11 ISO-00 AID-20 CIAE-00 COME-00 EB-11

FRB-02 INR-10 NSAE-00 RSC-01 TRSE-00 XMB-07 OPIC-12

SPC-03 CIEP-02 LAB-06 SIL-01 OMB-01 SAM-01 NSC-10

SS-20 STR-08 CEA-02 H-03 IO-14 FS-01 ABF-01 /151 R

DRAFTED BY L/NEA:ATBROWN:DLS
APPROVED BY NEA: AMB. MOYNIHAN
NEA/INS:DWBORN
TREASURY - JON GASSERUD
AID/GC/ASIA:MGKITAY

----- 020244

R 311550Z JAN 74

FM SECSTATE WASHDC

TO AMEMBASSY NEW DELHI

C O N F I D E N T I A L STATE 020540

E.O. 11652:GDS

TAGS: EFIN, IN

SUBJECT: RUPEES: AMENDMENTS

1. FOLLOWING THE RUSH OF ELEVENTH HOUR NEGOTIATIONS
DEC. 11 AND 12 A FEW ERRORS AND ROUGH SPOTS IN THE
TEXT OF THE AGREEMENT HAVE APPEARED. WE BELIEVE THE
FOLLOWING CHANGES NECESSARY EITHER FOR PURPOSES OF CLARITY
OR TO CORRECT TECHNICAL ERRORS. ALL REFERENCES ARE TO
DRAFT INITIALED DEC. 13 AS TRANSMITTED BY EMB.

2. FIRST LINE OF PARA 5, PART I: THE REFERENCE TO
PARA 4 SHOULD BE TO PARA 3.

3. SECOND LINE OF THIRD WHEREAS CLAUSE, PART II:
THE REFERENCE TO PARA 5 SHOULD BE TO PARA 6. ALSO, THIS
CLAUSE APPEARS TO US EXTREMELY ROUGH. SUGGEST DELETION
OF THE PHRASE ", BY OPERATION OF THE AGREEMENTS REFERRED
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TO ABOVE IN THIS PART II AND AS A RESULT OF CERTAIN IN-

TEREST EARNINGS,". THAT REFERENCE TO SOURCES OF RUPEES CONCERNED IS UNNECESSARY AS THEY ARE AGAIN DESCRIBED IN SUBCLAUSES (A), (B) AND (C) OF THE SAME PARAGRAPH.

5. PARA 2 OF PART II: PARA 1 PROVIDES FOR PREPAYMENT OF PRINCIPAL AND PAYMENT OF ACCRUED INTEREST. THEREFORE, FOLLOWING THE WORD "PREPAYMENT" IN PARA 2, THERE SHOULD BE

INSERTED THE PHRASE "OF PRINCIPAL AND PAYMENT OF ACCRUED INTEREST". THIS IS THE LANGUAGE USED IN THE CORRESPONDING PROVISION OF PART I (PARA 1(B)).

6. FIRST SENTENCE OF PARA 4(A) OF PART II STATES THAT GOI SHALL ESTABLISH AN ACCOUNT IN FAVOR OF USG IN AMOUNT OF RS. 3890 MILLION. SECOND SENTENCE PROVIDES THAT THE USG SHALL ESTABLISH THE ACCOUNT BY TRANSFERRING THE SAME AMOUNT FROM ITS RUPEE ACCOUNT. BELIEVE THIS PARA CONFUSING AND SHOULD BE AMENDED TO READ AS FOLLOWS:

"(A) ON THE DATE OF THIS AGREEMENT, THE GOVERNMENT OF THE UNITED STATES OF AMERICA SHALL TRANSFER THE RUPEE EQUIVALENT OF DOLS. 500 MILLION FROM THE RUPEE ACCOUNT TO A NEW ACCOUNT ESTABLISHED IN ITS FAVOR WITHIN THE PUBLIC ACCOUNT OF THE GOVERNMENT OF INDIA, SUCH ACCOUNT TO BEAR NO INTEREST (THE "DOLLAR DENOMINATED ACCOUNT"). AT THE APPLICABLE RATE OF EXCHANGE IN EFFECT ON THE DATE OF THIS AGREEMENT, THE AMOUNT SO TRANSFERRED SHALL BE RS. (BLANK) ."

7. PARA 4(B), PART II; PHRASE "EXCHANGE RATE IN EFFECT ON SUCH BUSINESS DAY" (BOTTOM TWO LINES ON PAGE 14) SHOULD READ "EXCHANGE RATE IN EFFECT ON SUCH ANNIVERSARY DATE". THE DEFINITION IN PARA 4(C) PROVIDES MEANS FOR CALCULATING EXCHANGE RATE FOR "ANY ANNIVERSARY DATE" -- THERE IS NO PROVISION IN THE AGREEMENT FOR THE CALCULATION OF AN EXCHANGE RATE ON THE FIRST BUSINESS DAY FOLLOWING AN ANNIVERSARY DATE.

8. PART II, PARA 4(C), LINE 2: THE PHRASE "ON THE DATE OF THIS AGREEMENT AND" SHOULD BE INSERTED BE-

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TWEEN THE PHRASES "APPLICABLE EXCHANGE RATE" AND "ON ANY ANNIVERSARY DATE". THIS NECESSARY BECAUSE AN EXCHANGE TRANSACTION WILL OCCUR ON THE DATE OF EXECUTION WHEN THE AMOUNT OF RUPEES REPRESENTED BY DOLLARS 500 MILLION IS CALCULATED, BUT THE MECHANISM FOR DETERMINING EXCHANGE RATES AS PRESENTLY DRAFTED IN PARA 4(C) APPLIES ONLY TO EXCHANGE RATES "ON ANY ANNIVERSARY DATE". THIS AMENDMENT WILL AVOID ANY LAST MINUTE CONFUSION ON JUST

WHAT RATE IS TO BE USED FEB. 19, AND ANY FUTURE DEBATE
OVER WHAT RATE SHOULD HAVE BEEN USED.

9. IN ORDER TO INSURE THAT ADJUSTMENTS CAN BE MADE
IN THE AMOUNT OF SECURITIES EXCHANGED FOR RUPEES UNDER
PARA 3 OF PART II, THE LAST LINE OF PARA 6 OF PART II
SHOULD BE AMENDED TO READ "OF THE RUPEES PREPAID, PAID

OR TRANSFERRED PURSUANT TO PARAGRAPHS 1, 2 AND 3 OF THIS
PART II., THIS IS THE LANGUAGE USED IN THE CORRESPONDING
PROVISION OF PART I (PARA 1(D)).

10. AFTER DISCUSSING WITH AMB. MOYNIHAN, WE ARE
TRANSMITTING THESE CHANGES NOW FOR EMB REVIEW BUT NOT
FOR IMMEDIATE PRESENTATION TO THE GOI. TO REDUCE THE
LIKELIHOOD OF NEW IDEAS FROM INDIANS, IT MAY BE WISE
NOT TO RAISE CHANGES WITH GOI EARLIER THAN NECESSARY.
ALSO, IT MAY BE WELL TO WAIT UNTIL CONGRESSIONAL CONSUL-
TATIONS ARE FURTHER ADVANCED TO SEE WHETHER COMMITTEES
WILL ASK FOR ADDITIONAL CHANGES. HOWEVER, EMB WILL HAVE
BEST FEEL FOR APPROPRIATE TIME TO BEGIN THE PROCESS.

11. FINALLY, THE INITIALED AGREEMENT HAS BEEN RE-
VIEWED BY TREATY EXPERTS HERE WHO HAVE MADE A NUMBER OF
EDITORIAL CHANGES TO CONFORM WITH COMMON USG/INTERNATIONAL
PRACTICE. THESE AND FOREGOING AMENDMENTS ARE BEING
POUCHED TOGETHER WITH INSTRUCTIONS AND OTHER MATERIAL
CONCERNING FINAL PREPARATION OF SIGNATURE DOCUMENTS.
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